

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case No. 04-35727-GFK
Chapter 7

Stephen Twite,

Debtor(s)

**NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY**

TO: The Debtor(s) and other entities specified in Local Rule 9013-3(a).

1. JPMorgan Chase Bank as Trustee moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 10:30 a.m., on November 15, 2004, in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered no later than November 9, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, or holidays), or filed and served by mail no later than November 3, 2004 which is seven days before the time set for the hearing(excluding Saturdays, Sundays, or holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on October 1, 2004. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. By mortgage dated November 21, 2002, in the original principal amount of \$244,000.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. 1992155, Movant acquired a first mortgage's interest in the following real property (the "Property"), to-wit:

Lot 5, Block 2, St. Francis Wood 3rd Addition, Dakota County Minnesota

The Mortgage was filed in the offices of the Recorder, for Dakota County, Minnesota on January 30, 2003, as Document No. 1992155. A copy of the Mortgage and Assignment are attached hereto as Exhibit A.

7. The last payment received from Debtors was applied to the January, 2004 payment as that was the next payment due. Debtor(s) is delinquent under the terms of the note secured by the Mortgage with respect to monthly payments due as follows:

1 payment @ \$2,273.66	\$2,273.66
8 payments @ \$2,241.78	\$17,934.24
9 late charges @ \$99.26	\$893.34
Accrued late charges	\$794.08
BPO	\$105.00
Attorneys Fees & Cost	\$2,339.50
TOTAL	<hr/> \$24,339.82

The outstanding principal balance due to Movant under the terms of the note is \$242,204.21 as of October 22, 2004, and interest accrues at the rate of 9.125% per diem per day. On information and belief, the Property is also encumbered by a secured lien in favor of Townhomes Widgeon Wood in the approximate amount of \$12,000.00. The amount therefore due and owing on said note is as follows:

Principal Balance	\$242,204.21
Late charges	\$1,687.42
BPO	\$105.00
Interest	\$17,127.81
Attorneys Fees & Costs	\$2,339.50
TOTAL	<hr/> \$263,463.94

The fair market value of the Property as averred by the debtor is approximately \$275,000.00

8. Movant does not have, and has not been offered, adequate protection of its interest in the Property. In view of the fact that this is a Chapter 7 liquidation proceeding, the Property is not necessary for an effective reorganization. Moreover, Debtor(s) failure to make payments to Movant when due, or otherwise provide Movant with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. Sec. 362(d)(1), entitling Movant to relief from the automatic stay.

9. If testimony is necessary as to any facts relevant to this motion, Nancy A. Nordmeyer, 7300 Metro Boulevard #390, Edina, MN, will testify on behalf of Movant.

10. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act

and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

WHEREFORE, Movant, respectfully moves the Court for an Order modifying the automatic stay of Sec. 362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as may be just and equitable.

Dated: 10.26.01.

Signed: /e/ NANCY A. NORDMEYER

SHAPIRO & NORDMEYER, L.L.P.
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

VERIFICATION

I, Dan Aintzer, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on:

10-22-04

Signed:

[Signature]

Fidelity National Foreclosure Solutions
1270 Northland Drive, Suite 200
Mendota Heights, MN 55120

DOC. NO.

2067038

OFFICE OF THE COUNTY RECORDER
DAKOTA COUNTY, MINNESOTA

CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

2003 JUN 20 AH 10:45

JOEL T. BECKMAN, COUNTY RECORDER

BY: *TB* Deputy

FEES: *29.00* SURCHARGE: *500*

CASH ☐ CHECK ☐ ESCROW ☒

WELL ☐ CHARGE ☐

CHARGE TO: _____

O/R _____

RHSTILE

2067038

1st
recorded 11/30/03
1992155 -
then corrected

06/11

0-17.03

Receipt No. _____
REGISTRATION TAX \$ _____
CONDOMINIUM FEE \$ 5.00
PAYER: *RHS*

LOAN NO.: 0021482

(Space Above This Line For Recording Date)

CORRECTIVE

MORTGAGE

TO CORRECT ERROR ON PAGE 2 OF MORTGAGE,
CONDOMINIUM RIDER WAS CHECKED INSTEAD OF
PLANNED UNIT DEVELOPMENT RIDER. MORTGAGE
PREVIOUSLY FILED JANUARY 30, 2003, Document

DEFINITIONS Number 1992155, PAID \$566.20, RECEIPT 569064.

Words used in multiple sections of this document are defined below and other words are defined in Sections 3,
11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in
Section 16.

(A) "Security Instrument" means this document, which is dated
together with all Riders to this document.

NOVEMBER 21, 2002

(B) "Borrower" is

STEPHEN D TWITE, A SINGLE PERSON

RHS Title, LLC *11949*
1895 Plaza Drive, Suite 100
Eagan, MN 55122

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is MARIBELIA MORTGAGE, LLC.

Lender is a

organized and existing under the laws of

THE STATE OF MINNESOTA

Lender's address is 3600 MINNESOTA DR. STE. 160

EDINA, MN 55435

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated

NOVEMBER 21, 2002

The Note states that Borrower owes Lender

TWO HUNDRED FORTY-FOUR THOUSAND AND 00/100

Dollars (U.S. \$ 244,000.00) plus interest. Borrower has promised to pay this debt in regular
Periodic Payments and to pay the debt in full not later than

DECEMBER 1, 2032

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the
Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due
under the Note, and all sums due under this Security Instrument, plus interest.

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3024 1/01
Lender Forms Inc. (R00) 44A 1555
LFI #FNMA3024 1/01 (A)

Page 1 of 13

Initials: *[Signature]*

DOC. NO. 2098073

OFFICE OF THE COUNTY RECORDER
DAKOTA COUNTY, MINNESOTA

CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

2003 AUG 21 AM 9:00

JOEL T. BECKMAN, COUNTY RECORDER

BY: *[Signature]* Deputy

FEE *85.00* SURCHARGE *5.00*

CASH ☐ CHECK ☒ ESCROW ☐

WELL ☐ CHARGE ☐

CHARGE TO: _____

O/R _____

Peelle Corp.
P.O. Box 30014
Reno, NV 89520-9827

2098073

Assignment of Real Estate Mortgage/Deed of Trust

Loan #. 0021482

FOR VALUE RECEIVED the undersigned hereby grants, assigns and transfers to:

8281843
4672
JP Morgan Chase Bank as Trustee, c/o Residential Funding
Corporation, 2255 North Ontario, Suite 400, Burbank, CA 91504-3190

All the rights, title and interest of undersigned in and to that certain Real Estate Mortgage/Deed of Trust
dated NOVEMBER 21, 2002 executed by STEPHEN D TWITE, A SINGLE PERSON

To MARIBELLA MORTGAGE, LLC.

A Limited Liability Company organized under the laws of Minnesota

And whose principal place of business is 3600 Minnesota Dr. Suite 160 Edina, MN 55435

And recorded in DAKOTA

County Records as Document # *22-037* *1992155*

State of MINNESOTA described hereinafter as follows:

rel. 01-30-2003

LOT 5, BLOCK 2, ST. FRANCIS WOOD 3RD ADDITION, ACCORDING TO THE RECORDED PLAT
THEREOF, DAKOTA COUNTY, MINNESOTA.

Commonly known as: 3676 WIDGEON WAY, EAGAN, MN 55123

TOGETHER with the note or notes therein described or referred to, the money due and to become due
thereon with interest, and all rights accrued under said Real Estate Mortgage/Deed of Trust.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

[Signature]
MARIBELLA MORTGAGE, LLC

BY: TRACY DORDAN
ITS: ASST. VICE PRESIDENT

On NOVEMBER 21, 2002 before me, the undersigned, a Notary
Public in and for said County and State, personally appeared
TRACY DORDAN known to me to be the ASST. VICE PRESIDENT
and known to me to be of the Limited Liability Company
herein which executed the within instrument, that said
instrument was signed on behalf of said Limited Liability
Company pursuant to its by-laws or a resolution of its Board
of Directors and that he/she acknowledges said instrument to
be the free act and deed of said Limited Liability Company.

Notary Public *[Signature]*

Drafted By:

Maribella Mortgage, LLC

3600 Minnesota Dr. Suite 160

Edina, MN 55435

After Recording Return To:

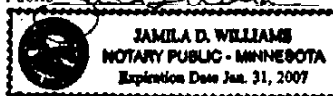
PEELLE MANAGEMENT CORPORATION

ASSIGNMENT JOB #90822

P.O. BOX 30014

RENO, NV 89520-3014

(775) 827-9800



UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-35727-GFK
Chapter 7

Stephen Twite,

Debtor(s)

MEMORANDUM OF LAW

JPMorgan Chase Bank as Trustee ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$24,339.82.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than 8 months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrcty. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrcty. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrcty. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$24,339.82. [The property is encumbered by a secured lien in favor of Townhomes Widgeon Wood in the approximate amount of \$12,000.00.] The fair market value of the property is approximately \$275,000.00. Clearly, the Debtor(s) have no equity in the property.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: 10.26.11.

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

Signed: /s/ NANCY A. NORDMEYER
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

I, **Stephanie Pilegaard** says that on October 26, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

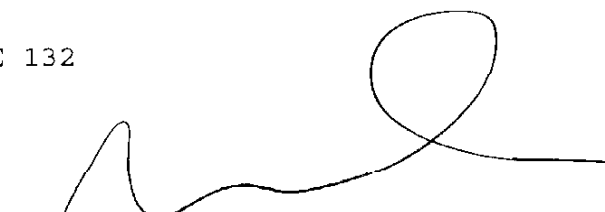
Stephen Twite
3676 Widgeon Way
Eagan, MN 55123

Ian T. Ball, Esq.
12 South 6th Street, #326
Minneapolis, MN 55402

Nauni Manty, Trustee
333 S. 7th Street STE 2000
Minneapolis, MN 55402

U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415

Townhomes Widgeon Wood
C/O Timothy Fuller, Esq.
12400 Portland Ave South STE 132
Burnsville, MN 55337

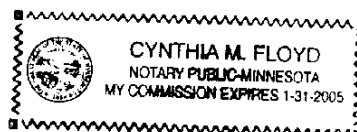


Stephanie Pilegaard

Subscribed and sworn to before me October 26, 2004.



Notary



04-28435
0435102652

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case Number BKY 04-35727-GFK

Stephen Twite
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on November 15, 2004.

THIS CAUSE coming to be heard on the Motion of JPMorgan Chase Bank as Trustee, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow JPMorgan Chase Bank as Trustee, its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

Lot 5, Block 2, St. Francis Wood 3rd Addition, Dakota County, Minnesota

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court